

July 25, 2022

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

SHERROD, TEED, VANDERHAGEN and WARE,

Plaintiffs,

-v-

Case No. 17-10164

VNA and LAN,

Defendants.

/

JURY TRIAL

BEFORE THE HONORABLE JUDITH E. LEVY
UNITED STATES DISTRICT JUDGE

JULY 25, 2022

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(Appearances Continued on Next Page)

TO OBTAIN A
CERTIFIED
TRANSCRIPT:

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FEDERAL OFFICIAL COURT REPORTER
UNITED STATES DISTRICT COURT
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July 25, 2022

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I N D E XWITNESSESPAGE

(None)

EXHIBITSMarkedAdmitted

(None)

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P R O C E E D I N G S

THE CLERK: Calling Sherrod, Teed, Vanderhagen, and Ware vs VNA and LAN.

MR. STERN: Good morning, Judge.

THE COURT: Good morning.

MR. STERN: Corey Stern and Moshe Maimon for the plaintiffs.

THE COURT: Thank you.

MR. KENT: Good morning, Your Honor.

David Kent and Phil Erickson for LAN.

THE COURT: Thank you. Good morning.

MR. STEIN: And good morning, Your Honor.

Daniel Stein and Mark Ter Molen for VNA.

THE COURT: Great. Thank you. Please be seated.

And welcome, Jenia Thompson, my intern.

Well, the jury is all here. That's great news. And they are -- we have now closed the door so they can begin discussions while they await these exhibits.

And I have the three different emails from all of you about what you think would be appropriate to do. And I think where we all agree is that the exhibits that were admitted into evidence should be provided.

MR. KENT: Yes, Your Honor.

THE COURT: And can you tell me what -- you know, I realize I didn't bring the note itself down. So let me log on

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1 where I have -- where we have it scanned.

2 MR. ERICKSON: Your Honor.

3 THE COURT: Yes.

4 MR. ERICKSON: If I may?

5 THE COURT: Please.

6 MR. ERICKSON: There's been an exchange of emails
7 over the weekend.

8 THE COURT: Oh.

9 MR. ERICKSON: And we have substantially narrowed the
10 areas of disagreement.

11 THE COURT: Oh.

12 MR. ERICKSON: With regard to the exhibits, there are
13 really only three categories where we disagree as to what
14 should be provided.

15 THE COURT: Okay.

16 MR. ERICKSON: So it's the 2011 proposal request.

17 THE COURT: Yeah.

18 MR. ERICKSON: The 2013 proposal request. And the
19 Jeff Hansen to Kelly Hoffman request.

20 Other than that, we've reached agreement on what
21 should be provided. And then, of course, there's the
22 transcript issue.

23 THE COURT: Okay. Let me just look at the note.
24 Just a minute. I hope everybody had a good weekend.

25 I see Mr. Mason. Is he doing all right?

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1 MR. KENT: Yes. He just has another matter that he's
2 dealing with this morning.

3 THE COURT: Good for him.

4 Okay. So on the exhibits list, there's the LAN
5 contract. Okay. And we're in agreement to provide that.

6 MR. KENT: Yes, Your Honor. And it's going to be the
7 full contract, not only the one signed for June 26, 2013, but
8 all the change orders, 2, 3, 4, and 5.

9 THE COURT: That's okay.

10 MR. KENT: Because collectively they are the
11 contract.

12 MR. MAIMON: Well, I wouldn't say that collectively
13 they are the contract.

14 THE COURT: They're --

15 MR. MAIMON: They're contracts, and they're LAN
16 contracts. And so the jury asked for the LAN contract and so
17 we should just --

18 THE COURT: Give them --

19 MR. MAIMON: Without starting prying into what
20 they're really looking for.

21 THE COURT: Yeah. Okay. So then 2011 proposal.
22 What do we think that is?

23 MR. ERICKSON: Your Honor, there's -- LAN defendants
24 suggest that it should be the 2011 report.

25 THE COURT: Report.

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1 MR. ERICKSON: We think it seems clear. But if the
2 Court thinks it's not clear, we would suggest that the Court
3 ask the jury if that's what they're looking for.

4 But the 2011 report, the complete copy, is LAN 1198.
5 And I think -- I don't know if the Court would remember during
6 the trial, there was an issue about there were copies that
7 were admitted without the attached spreadsheets.

8 THE COURT: Right.

9 MR. ERICKSON: The complete copy is 1194 -- no.
10 LAN 1198.

11 THE COURT: 1198 is the complete.

12 MR. ERICKSON: Right. And so we would object to
13 providing other documents without the spreadsheets as
14 incomplete. And then I believe the plaintiffs were suggesting
15 that some other documents be provided, drafts and what have
16 you. But it's a singular request. So we would suggest that
17 they're looking for one document.

18 THE COURT: And is the report that was provided to
19 the City of Flint, did it have all of the attachments when it
20 was provided to the City of Flint, not to plaintiffs in
21 discovery.

22 MR. ERICKSON: Your Honor, the testimony of Warren
23 Green was that it was provided to the county --

24 THE COURT: To county.

25 MR. ERICKSON: -- because the county was the one that

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1 ordered the work. And so he provided it with the spreadsheets
2 to the county.

3 THE COURT: Okay. Is that your recollection,
4 Mr. Maimon?

5 MR. MAIMON: No. And I don't think we -- I don't
6 think it's proper to start asking -- the jury asks us
7 questions. We don't ask the jury. I don't believe that it's
8 proper for us to start making inquiries into a jury --

9 THE COURT: Yeah.

10 MR. MAIMON: -- about a particular request that they
11 had. And I don't think it's proper for us to think that we
12 know what juries want.

13 So there are several documents all of which are
14 complete, because that's the way they were produced to us.
15 And so this whole notion that somebody else knows what's
16 complete as opposed to this was produced to us.

17 So for instance, we have in evidence Plaintiffs'
18 Exhibit 1993, which was from Jeff Hansen from LAN to Brent
19 Wright, the water treatment plant supervisor of September 21,
20 2011, enclosing the LAN appendix of the report. We put that
21 in evidence. We believe it should go back.

22 We have February 11, 2011, a proposal by LAN to the
23 KWA, and that is a 2011 proposal. So we believe that that
24 should go back.

25 THE COURT: Yeah.

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1 MR. MAIMON: Even though we may think that they're
2 talking about something else.

3 THE COURT: Right. A 2001 proposal from LAN should
4 go in response to a request for the 2011 proposal, which is --
5 starts out on a list that says, "LAN contract Warren Green's
6 testimony."

7 It appears possibly that the jury is starting with
8 Question 1 on the verdict form. That's what I'm thinking.
9 Question 1 relates to LAN. If there's a 2011 proposal from
10 LAN, it should go.

11 MR. MAIMON: So we agree that LAN 1198 is a 2011
12 proposal. But we also have another version of that, which is
13 plaintiffs' 3673. And we think that -- at this point because
14 we admitted multiple copies, we believe that the jury should
15 get the multiple copies.

16 THE COURT: Yeah.

17 MR. MAIMON: It might be onerous on them. But we
18 don't think that counsel should be interpreting. And then we
19 finally had 3670, which was just the technical memorandum of
20 LAN for the report of June 8, 2011.

21 THE COURT: Mr. Erickson, any problem with giving
22 1198, 3673, and 3670?

23 Those are the three you're talking about, Mr. Maimon?

24 MR. MAIMON: So I'm talking about 1993.

25 THE COURT: Oh. And what is that?

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1 MR. MAIMON: That's the report that they sent to the
2 city.

3 THE COURT: Oh.

4 MR. MAIMON: 2466, which is their proposal to the
5 KWA, February 11, 2011. 3670, which is their Appendix 8 to
6 the June 8, 2011 report. And 3673, which is the July 2011
7 report. It says, "prepared for City of Flint." So I don't
8 know what else it is.

9 But we also agree that LAN 1198 should go to the
10 jury.

11 THE COURT: Okay. Any problem with that list,
12 Mr. Erickson?

13 MR. ERICKSON: Yes, Your Honor. We do object to all
14 of the four that the plaintiff have listed. Number one, as I
15 said before, providing copies without the spreadsheets, even
16 though it's clear on the face of the documents that the
17 spreadsheets are a part of the document.

18 I could show you where it's -- the spreadsheets are
19 incorporated by reference into the document.

20 THE COURT: I remember that.

21 MR. ERICKSON: And so it's misleading to provide the
22 jury copies of the documents that are incomplete.

23 THE COURT: My only --

24 MR. ERICKSON: The spreadsheets specifically refer to
25 the Safe Drinking Water Act and the Lead and Copper Rule.

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1 THE COURT: What I'd like to do is there was
2 testimony -- these exhibits that we've just gone through,
3 there was testimony about them. And so I don't see any
4 problem with it, just out of an abundance of caution, as
5 people like to say, let's give them everything that was an
6 exhibit admitted into evidence that relates to a 2011 LAN
7 proposal/report.

8 So I'll go ahead and provide all of those to them.
9 One, two, three, four, five, six -- seven different exhibits.
10 They'll get the spreadsheet. They'll see it. And some of
11 their notes will relate to testimony without the spreadsheet
12 and then with the spreadsheet.

13 And they'll have it, and they'll see it relates to
14 Appendix 8. Appendix 8 has SDWA material. So I think we'll
15 cover all basis.

16 MR. MAIMON: I'm not sure. I counted six, Your
17 Honor.

18 THE COURT: 3673, 3670, 1993, 2466, 30 -- oh, I've
19 got 3670 twice. Okay.

20 MR. MAIMON: Oh, no. So I have the following.
21 LAN 1198. That's what Mr. Erickson was referencing.

22 THE COURT: Got it.

23 MR. MAIMON: And then ours in numerical order are
24 1993, 2466, 3670, 3673, and 3894-003.

25 THE COURT: Oh, I didn't even have that. Okay. I've

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1 got it now.

2 MR. ERICKSON: Your Honor, we also object -- this is
3 the first time that this last one has been mentioned today.
4 3894-003 is a draft of a report. And there is no request for
5 drafts.

6 THE COURT: Okay. Why don't we leave that off, and
7 we'll wait to request -- until they ask for a draft.

8 MR. KENT: And you know, Your Honor, if you're going
9 to be specific about it, when they ask for the 2011 proposal,
10 part of what -- three of the things or four of the things that
11 the plaintiffs have requested are not the proposal, which is
12 really just the Rowe report.

13 There was no proposal. It was always a report. And
14 what they're suggesting is we're going to give them an excerpt
15 from the report that is pre- and post-letters that only deal
16 with Appendix 8.

17 If we're going to not try to interpret what the jury
18 says, then the proposal should be the Rowe report. And they
19 can have both copies, one with the spreadsheets, one without
20 the spreadsheets. But sending them Appendix 8 doesn't make --
21 it seems inconsistent to me.

22 THE COURT: Okay. Thank you. I will provide all of
23 them except for the draft. And if they want the draft, they
24 can ask for it.

25 So now we're on Treatability Study 4 AB&H.

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1 MR. MAIMON: We have agreement on that.

2 THE COURT: Okay. What exhibit number is that?

3 MR. ERICKSON: P2001. P2001.

4 THE COURT: Okay. Then we have 2013 proposal.

5 MR. ERICKSON: Again, Your Honor, we have a singular
6 request. And we suggest that there be one document provided,
7 which is the June 10, 2013, LAN proposal. The plaintiffs are
8 requesting a different proposal to KWA.

9 THE COURT: Oh.

10 MR. ERICKSON: And if the Court agrees with the
11 plaintiff and believes that all proposals should be provided,
12 then we have three our documents --

13 THE COURT: Okay.

14 MR. ERICKSON: -- that are LAN proposals from the
15 summer of 2013 that we would request be sent, as well.

16 THE COURT: That makes sense to me.

17 MR. MAIMON: So -- well, again, what counsel believes
18 is clear from the jury question really is of no moment and
19 shouldn't guide what we sent.

20 THE COURT: I know. But they're trying to say, "This
21 is what we think." You're going to say, "This is what we
22 think." I'm going to say, "That might be what it is," you
23 know, at some point.

24 MR. MAIMON: Right. So we believe that 2013
25 proposal, there's one dated June 10, 2013; that's to the City

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1 of Flint. And there's one June 6, 2013; that's to the KWA.

2 These are both LAN proposals.

3 THE COURT: Okay. I'd like to do both of those,
4 because I don't know what "2013 proposal" means, so I'd rather
5 give them more.

6 MR. MAIMON: Right. So there's a document LAN 48,
7 which is a spreadsheet of costs. But it's related to a
8 proposal in 2013. We don't have any problem with that going.
9 That's LAN -- as I said, LAN 48.

10 THE COURT: Okay.

11 MR. MAIMON: We do have a problem with the
12 defendants' highlighting being on the document that goes back
13 to the jury.

14 THE COURT: Oh, do you have it without highlighting?

15 MR. ERICKSON: Your Honor, the only copy that's in
16 the record is L48, which does have some handwritten notes in
17 the margin --

18 MR. MAIMON: I don't care about notes.

19 MR. ERICKSON: -- from the meeting.

20 MR. MAIMON: I just care about the highlighting.

21 MR. ERICKSON: Let me look at my copy.

22 THE COURT: I can look at our copy if you think you
23 might have submitted it to me without --

24 MR. MAIMON: On the final page.

25 MR. KENT: It does have some highlighting.

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1 MR. ERICKSON: Yeah, that's how the document was
2 admitted.

3 THE COURT: Okay.

4 MR. MAIMON: No, I don't think it's how it's
5 submitted. We marked up copies as we were going along. But a
6 document --

7 THE COURT: Well, I'll look.

8 MR. KENT: There are two pages, Your Honor, where
9 there is some yellow highlighting.

10 THE COURT: Okay.

11 MR. KENT: On the first page under the column TBD --

12 MR. MAIMON: I don't have a problem with the TBD.

13 MR. KENT: Okay. And on the last page, there's
14 handwritten notes in -- down in the bottom right-hand corner,
15 some of the notes are highlighted.

16 MR. MAIMON: It should be easy to get a clean copy.

17 MR. KENT: For some reason among our well-prepared
18 notebook, we don't have that one it appears.

19 THE COURT: Okay. I'm going to hold that out, and
20 I'll look for it in the back on mine.

21 MR. KENT: Yeah.

22 MR. ERICKSON: Your Honor, there is a further LAN
23 proposal from 2013. It is the -- it's P2462. And I want to
24 apologize to plaintiffs, because in our email exchange, I had
25 the wrong number. But it's P2462. It's the August 20, 2013,

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1 proposed scope of upgrades document.

2 MR. MAIMON: 2462 you said?

3 MR. ERICKSON: 2462.

4 THE COURT: And in the meantime, can you tell me
5 whose binder -- we have the binders just the way you gave it
6 to us -- whose binder LAN 48 might be in.

7 Would it have been Warren Green?

8 MR. ERICKSON: It would have been in the Warren Green
9 binder. Probably in the LAN Warren Green binder.

10 THE COURT: Okay.

11 MR. KENT: Possibly the Jeff Hansen binder. But I
12 think more likely in the Warren Green binder.

13 THE COURT: Okay. We'll look at both.

14 MR. MAIMON: So we have the following. We have
15 Plaintiffs' 3674, Plaintiffs' 3894-009. And now we have
16 Plaintiffs' 2462, which we don't object to. And if they clean
17 up LAN 1198, we don't object to it.

18 THE COURT: Okay.

19 MR. ERICKSON: You mean LAN 48.

20 THE COURT: 48.

21 MR. MAIMON: I'm sorry.

22 THE COURT: Okay. So we'll look for LAN 48, and
23 we'll send all of those 2013 proposals.

24 What is this Jeff Hansen's email to somebody Hoffman?

25 MR. MAIMON: So during Mr. Hansen's testimony, there

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1 was some testimony about email exchanges between him and what
2 was his fiance and became his wife.

3 THE COURT: Yes.

4 MR. MAIMON: So there are three exhibits or four
5 exhibits that are his email exchanges between the two of them.
6 One is 2857. And at that time, her name was Hoffman.

7 THE COURT: That's right.

8 MR. MAIMON: And then there is --

9 THE COURT: Last name Kelly?

10 MR. MAIMON: Kelly, yes.

11 THE COURT: Okay.

12 MR. MAIMON: And then 2859, 2906, and 2907. By that
13 point, she had changed her name to Green. But his testimony
14 was clear that it's the same person.

15 THE COURT: Right. No, I recall that.

16 MR. MAIMON: So we believe that all four should go to
17 the jury.

18 MR. ERICKSON: And, Your Honor, we obviously don't
19 disagree that it's the same person. But, again, the request
20 is singular. "Email from Jeff Hanson to Kelly Hoffman."
21 There is only one email from Hansen to Kelly Hoffman in the
22 record.

23 I don't know why we would interpret their request as
24 a request for more than one email.

25 THE COURT: Okay. Let me think about that one. We

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1 can start with the one to Kelly Hoffman. I may need to get
2 clarification, because if they actually want the emails to
3 this human being, Kelly, and they may not know when she
4 changed her name. But I don't know if they do or don't.
5 Maybe they only want when they were not yet married.

6 So I will probably ask for clarification on that.

7 MR. KENT: Well, you know, Your Honor, we just heard
8 a moment ago that we should not be asking for clarification.

9 THE COURT: That's what you heard from counsel. You
10 didn't hear it from me.

11 MR. KENT: Well, and --

12 THE COURT: So let's move on.

13 MR. KENT: I appreciate that, Your Honor.

14 THE COURT: I do, too. Okay.

15 So Pieper and Masten articles, those are not in
16 evidence.

17 MR. KENT: Correct.

18 THE COURT: So I need to bring the jury in here and
19 remind them that those are exhibits that the rules allow
20 lawyers to use, and they did it properly. There was nothing
21 improper about it, but they're not actually evidence in our
22 case.

23 Any objection to me saying that?

24 MR. ERICKSON: No.

25 THE COURT: Okay. Then the August 27 -- oh, well, we

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1 know that's Exhibit 2117.

2 MR. MAIMON: Yes.

3 THE COURT: And then they say they want the proposal
4 that included the \$152,000 updates with phosphate feed system.

5 MR. MAIMON: We have that. That's plaintiffs'
6 Exhibit 3043.

7 MR. KENT: And we agree on that.

8 THE COURT: Okay. Now -- thank you.

9 So where are we with Warren Green's testimony? My
10 inclination is not to provide it to them, to ask them to rely
11 on their collective memories. To give this jury five full
12 days of testimony, we would have to extract sidebar
13 conversations. We have not -- it is in no shape to have that
14 done.

15 I also think that -- I don't know how many -- how
16 many pages is the five days?

17 MR. MAIMON: A lot.

18 THE COURT: A thousand?

19 MR. STERN: More.

20 THE COURT: More. That's what I thought.

21 MR. KENT: We haven't counted it.

22 THE COURT: Then it puts it in one person's hand.
23 Because eight jurors can't read a thousand pages. And I'm
24 just very worried about that. So I'd like to ask them to rely
25 on their collective memories and their notes. But notes don't

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1 carry any more weight than someone's memory.

2 Some people took notes. Some people took fewer notes
3 at least. So that's my proposal there.

4 Any objection to that?

5 MR. MAIMON: So we don't object, Your Honor. But I
6 think that if -- and I'm not advocating for this in any which
7 way. But if the jury would ask the Court that they want the
8 entirety of Mr. Green's testimony read back, which I hope they
9 wouldn't and I think is a slim, slim chance that they would,
10 we should not tell them they can't have something.

11 I think the Court can urge them --

12 THE COURT: At this time.

13 MR. MAIMON: -- at this time to rely. If there's a
14 -- and I think the Court can explain there are five days of
15 testimony. The procedure would be that you would come back
16 into the courtroom, and any testimony that you want read back
17 to you would be read back to you.

18 If you want five days, tell us you want five days.
19 If there's particular testimony, tell us that particular
20 testimony.

21 The federal model instructions do have -- and I
22 apologize for not including it in our proposed instructions to
23 the jury. There is an instruction that if there's particular
24 testimony you want, you'll be brought back into the courtroom.
25 It would be read. I agree that transcripts --

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1 THE COURT: I've never given that instruction,
2 because it almost invites jurors to do that as opposed to
3 relying on their collective memories.

4 MR. MAIMON: I do think -- the only thing I would say
5 is I do think that in response to the request, the Court has
6 to give an instruction, which is recognized. And I think that
7 at this point, telling them what the ground rules are for --
8 that they can't have transcripts.

9 But if there's particular testimony they're
10 interested in, let us know.

11 MR. KENT: Well, Your Honor, actually it's within
12 your discretion to printout transcripts and provide it to
13 them. So it would be improper to say the rules are you cannot
14 have it. It's within your discretion.

15 So if you're going to start on a staged approach,
16 then your suggestion is a good one. Just tell them rely on
17 their memory. Don't invite them to ask for specific things
18 ahead of time. They may come back and request it.

19 We do think it is appropriate to -- because of the
20 length of the testimony, it would be very hard to just pick
21 and choose which passage applies. So it would be appropriate
22 to give them the whole testimony. But I also understand we
23 would have to proofread it first to make sure we don't include
24 the colloquies and any sidebars, things like that.

25 It's not a simple matter of simply printing from

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1 page 1 to page end. I understand that.

2 THE COURT: Okay. In the U.S. vs Rogers case that I
3 looked at on Friday --

4 MR. KENT: Exactly.

5 THE COURT: -- talks about the district court having
6 wide discretion. But it also sort of warns that there, quote,
7 "There exists a real danger that the jury will emphasize this
8 evidence over other evidence. Therefore we hold that if a
9 district court chooses to give a deliberating jury transcribed
10 testimony or chooses to reread the testimony to a deliberating
11 jury, the district court then must give an instruction
12 cautioning the jury on the proper use of that testimony.

13 "This holding makes explicit a rule we haven't
14 consistently applied in the past."

15 MR. KENT: Yes, Your Honor.

16 THE COURT: So right now I'll ask them to rely on
17 their collective memories.

18 MR. KENT: And by the way, Your Honor, if I may, just
19 as a note, the U.S. vs Rogers, obviously a criminal case,
20 years later in the Eid vs Saint-Gobain Abrasives, which is --

21 THE COURT: Gobain who?

22 MR. KENT: Abrasives. That's a company.

23 THE COURT: Okay.

24 MR. KENT: 2010 Sixth Circuit. They discussed the
25 Rogers case and said, "Well, that's a criminal case. The need

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1 for the instruction may not be as great in a civil case."

2 Not suggesting that you wouldn't give an instruction.
3 Just to say I read the same thing.

4 THE COURT: Okay.

5 MR. KENT: The Rogers case. And then we checked it.
6 Because I wondered is a criminal case the same as a civil
7 case, and the Sixth Circuit said maybe not. So just an aside.

8 THE COURT: Okay. Good. All right.

9 MR. ERICKSON: Your Honor, one point of
10 clarification. I believe it was your ruling that with respect
11 to this one highlighted document that we need to find, we need
12 to get an un-highlighted copy.

13 THE COURT: Yes.

14 MR. ERICKSON: So we will work on that right now.
15 But it will probably take 20 minutes or 30 minutes.

16 THE COURT: And we'll look at ours. But what I'd
17 like to do is bring the jury in, tell them that this is what
18 the decision is and that we're gathering these documents,
19 because I want you to each look at the final set that goes to
20 the jury.

21 MR. ERICKSON: I'm going to call my paralegal right
22 now --

23 THE COURT: Okay.

24 MR. ERICKSON: -- and have her start working on this.

25 THE COURT: Okay.

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1 MR. ERICKSON: Can I do that from here?

2 THE COURT: Sure. Go right ahead. We're just trying
3 to get this job done. So we'll be in recess for a couple of
4 minutes.

5 (Pause In Proceedings)

6 THE COURT: Now what we'll do is go back on the
7 record, and Leslie will bring the jury in. And I do intend to
8 remind them something that I didn't remind them of, which is
9 that some people took more notes, some people took fewer
10 notes, that they're to rely on their memories and that no
11 particular method of remembering is superior to another.

12 THE CLERK: Please rise for the jury.

13 THE COURT: Hello. Welcome back. It's slightly
14 fewer people today. Okay.

15 (Jury In)

16 THE COURT: Please be seated. Okay.

17 For the members of the jury, thank you, so much, for
18 being here on time, ready to work and for your work already
19 last Thursday. And I have on the screen the note that you
20 sent us.

21 And I want to thank you for -- did I do something
22 wrong, Leslie?

23 THE CLERK: Oh, no. I'm sorry. Just listening.

24 THE COURT: I thought, "Oh, no."

25 I want to thank you for the note. That's exactly

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1 what we want you to do. You can send us as many notes as you
2 need to or want to or think would be helpful to your
3 deliberations. There's no limit on the number of notes.

4 So bring them on whenever you have them. That's what
5 we're here for.

6 So what I want to do with this first one is sometimes
7 we'll just type a message back to you, I'll send it to you,
8 and, boom, that's it.

9 But there's quite a bit of material here. So I just
10 want to tell you what we've done. We have gathered the
11 responses to your notes. And that includes you mentioned the
12 LAN contract, 2011 proposal, treatability study. So as best
13 we can, we've given you what we think you're asking for.

14 And some of them had multiple different copies of it,
15 so we're just giving you everything. And you can throw it
16 away, you can shred it. You can make doodles on it if it's
17 not what you want. But in the event that it is, we tried to
18 be as complete as possible.

19 And I want to tell you about one exhibit. You wrote
20 that you would like Jeff Hansen's emails to Kelly Hoffman.
21 There were actually, I think, four emails from Jeff Hansen to
22 Kelly Hoffman. She later became married to him and took on
23 his last name.

24 And we don't know if you want just -- there was one
25 message to Kelly Hoffman and I think three to Kelly Hansen.

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1 So just send us a note, tell us if you want the other three.
2 Because we're just being really literal. So if what you want
3 was all four, just let us know. Boom. We've got it ready to
4 go. You'll have it.

5 Then on the Pieper and the Masten articles, this is
6 one of the reasons I brought you in here.

7 Under the federal rules of evidence, lawyers -- which
8 is my little book -- lawyers are allowed to ask questions of
9 experts in particular from what we call learned treatises.
10 It's a rule of evidence that says it's not an exhibit, but it
11 can be used to cross-examine an expert on their conclusions.

12 So we can't give you the Pieper and the Masten
13 articles, because I'm only permitted to give you things that
14 are admitted into evidence. So I'll have to ask you to do the
15 best to rely on your collective memory of those articles, any
16 notes you may have taken.

17 And I know there's a reason you asked for it. And so
18 I'm just sorry to say that that's not permitted to go back to
19 the jury.

20 I want to say something about collective memory,
21 which is that the great thing about having eight jurors from
22 all walks of life is you pick up on different things in
23 different testimony.

24 Something resonates more with one person than another
25 person. And likewise, you're taking notes. Some took notes

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1 on one witness and others not at all on that witness and then
2 vice versa for the next witness.

3 And so with your notes and with your memory, there's
4 no superior type of way to remember something. So just
5 because one person or two or three put something in their
6 notes, if you remember it differently, speak up and say, "You
7 know, that's not what I mean."

8 And you don't have to say, "It's in my notes this
9 way." It can be right up here in your head and in your
10 memory.

11 So notes can be fantastic for me, at least for
12 focusing me in the moment. But not for everybody. For some
13 people, notes are distracting, and they actually get less --
14 they remember and hear less.

15 So it's a relatively new -- by "relatively new," I'd
16 say 20, 25 years to even let jurors have a notepad. So I
17 think it's the only way to go. But -- so I ask you to
18 consider what you remember, as well as your notes. Try to jog
19 each other's memories with those kinds of things.

20 Then here's the big one. With Warren Green's
21 testimony, we looked back, and he testified over five
22 different trial days. So it was more than one week of trial.
23 That would constitute thousands of pages of testimony. And
24 the general technique with when a jury asks for testimony is
25 to have the judge read it back to you.

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1 Because of why? Because we would need to extract any
2 objections. Because objections are not for the jury's
3 consideration. And any sidebars that took place in the back
4 would have to come out.

5 And so what I ask you to do for starters is to use
6 your memory of Warren Green's testimony. Let us know if that
7 doesn't work. If there's something specific or something we
8 can help you with, we'll try to put our heads together and
9 come up with an efficient, proper, effective way to get that
10 to it.

11 But for today, we'll give you all of these exhibits,
12 any other exhibits you have. And if you later have a question
13 about terminology and the jury instructions or how an
14 instruction works with another instruction, you can ask those
15 questions, as well.

16 It doesn't have to be just, "We need this or that
17 exhibit."

18 Another thing is you did really well, which is that
19 you don't have to have the exhibit numbers, though in one
20 instance, you did. And so that's great. But don't feel like
21 you have to. There were a lot of exhibits.

22 So I hope that this is helpful to you. And what I'll
23 do is ask Leslie to give all of this material to you. And I
24 know that you remember this from last week. But you're
25 reminded to only deliberate when everyone's there. Also if

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1 you can avoid any media reports about our case. I don't know
2 if there will be any this week or not. I don't know.

3 But it's just a reminder to stay focused on the
4 evidence here that you heard here in trial.

5 And if during your deliberations you can turn your
6 cellphones off or put them aside, that is what we're asking
7 for, as well. Okay.

8 So that will be that. And what I would ask is just
9 send us a note on the Kelly Hoffman-Kelly Hansen issue, and
10 we'll be happy to send you the other messages if we know that
11 that's what you're looking for.

12 Okay? Thank you.

13 (Jury Out)

14 THE COURT: Any objection to what was just told to
15 the jury?

16 MR. KENT: Say that again.

17 THE COURT: Any objection to what I just said to the
18 jury? Mr. Kent, none?

19 MR. KENT: No, Your Honor.

20 THE COURT: Mr. Stein?

21 MR. STEIN: No, Your Honor.

22 MR. MAIMON: No, Your Honor.

23 THE COURT: Okay. All right. Then we will --

24 MR. ERICKSON: One --

25 THE COURT: Sure. Please be seated.

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1 MR. ERICKSON: Your Honor, on Thursday right before
2 we broke, the Court asked everyone to bring a full set of
3 their exhibits to court.

4 THE COURT: Okay. Yes.

5 MR. ERICKSON: I just wanted to mention that we have
6 those. I don't know if the Court wants to have them provided
7 to the Court for now, or we'll just hold on to them.

8 THE COURT: I'd rather you keep them. And then as
9 the jury has questions, we'll sort out. If at a certain point
10 they're coming up with ten, 20 more exhibits each time, we'll
11 -- I'll consider just giving them all to them. It's not a big
12 jury room. And I just want them to be able to be -- have some
13 order to their process.

14 So thank you for bringing them, though.

15 MR. ERICKSON: Thank you.

16 THE COURT: So all right. We will take a break.

17 THE CLERK: All rise. The court is in recess.

18 (Brief Recess)

19 THE COURT: The question was are the jury questions
20 going to be -- we're not supposed to say "broadcast," because
21 broadcasting is prohibited by the judicial conference. Will
22 they be simultaneously on Zoom. And they won't for a couple
23 of reasons.

24 One is that it's difficult to predict when a juror
25 question will come about. We would have to docket it. And

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1 all of that. And so we just decided that we wouldn't do it
2 for that reason.

3 But I also really fear that the jury could bump into
4 a media report about their deliberations. And I think they're
5 following our instructions, they're staying away from the
6 media. But one juror already asked what's a bellwether.

7 And we haven't used -- have we used --

8 MR. MAIMON: It's on the verdict form. That's why.

9 THE COURT: Oh. I didn't notice that.

10 MR. STERN: Yeah. That's why they asked.

11 THE COURT: Oh. He did look at that and said,
12 "What's a bellwether?"

13 MR. MAIMON: They pay attention, yes.

14 THE COURT: Gee, I love this jury. They're paying
15 attention. Well, okay. I had thought that he might have
16 heard it on the news that this is a bellwether case. So
17 anyway, I don't want the jury thinking they're under a
18 microscope. It's fine for all of us to be under a microscope.
19 But I don't want them to feel that way, that if they send a
20 particular question out, it's going to be on the news that
21 afternoon or evening or on the internet.

22 So but what we will do when we have a verdict is when
23 the jury informs us that they have a verdict, Bill will docket
24 it and set up a Zoom link for the verdict. And then we'll
25 wait about 20 to 30 minutes. You know, whatever it takes to

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1 get everybody gathered here. And then the Zoom link will be
2 activated.

3 So is there any objection to that?

4 MR. STERN: No.

5 MR. KENT: No, Your Honor.

6 THE COURT: All right. All right. Then we'll be in
7 recess.

8 (Brief Recess)

9 THE COURT: Please be seated. And before
10 Mr. Erickson told us he's running late, this is 15 minutes
11 after we sent the communication requesting your presence due
12 to a jury question.

13 So let me -- have you given the jury questions --

14 THE CLERK: I have not yet. Would you like me to?

15 THE COURT: Oh, okay. Yes, please. And if you'll
16 just give Mr. Stein one for Mr. Erickson.

17 In the meantime, we have an email related to the
18 transcript that I just want to ask you about. So we're back
19 on the record in the bellwether case. And this is an email
20 that Jeseca received from -- it's -- so it was a DOJ request
21 regarding transcripts.

22 And it reads that, "We are aware that both
23 Miguel Del Toral and Jennifer Crooks testified via Zoom video
24 designations. Is there a way that we can get the designations
25 or get a copy of the videos? Please advise."

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1 MR. STERN: We don't have any issue providing them
2 with the clip reports that were used. I think that's probably
3 the easiest way to transmit the information without having to
4 deal and Dropboxes. So happy to share it to whomever.

5 I can reach out with counsel for defendants on one
6 email to Mike Williams and --

7 THE COURT: Eric Rey.

8 MR. STERN: And Eric Rey and see if that's sufficient
9 and get it to them.

10 THE COURT: Okay. So you'll take care of that, and
11 Jeseca can just respond that counsel will be in touch soon.

12 MR. STEIN: That sounds right to us, too.

13 THE COURT: And, Mr. Stein, will you let Mr. Erickson
14 know when he arrives?

15 MR. STEIN: Yes.

16 THE COURT: We have entered the lunch order.

17 MR. STERN: What are we getting today?

18 THE COURT: We're getting Cottage Inn. Usually it's
19 Afternoon Delight, because they're right across the street,
20 but they're closed on Mondays now. And I worked there when I
21 was in college, and they fired me. So we've come full circle.

22 MR. STERN: Everything happens for a reason.

23 THE COURT: That's right. It was a stressful
24 situation at the time. I never worked at Cottage Inn, though.
25 I had two other restaurant jobs. I wasn't suited to that.

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1 MR. STEIN: So with respect to the note, we're having
2 someone pull the exhibits and bring them over, and we'll see
3 if we can figure out which --

4 THE COURT: Okay. So VNA draft report.

5 What exhibit do you think that is?

6 MR. MAIMON: We're pulling them now, Your Honor.

7 THE COURT: Okay. You are, too. When it says, "VNA
8 proposal," do you have a sense of what that is?

9 MR. MAIMON: Yes.

10 THE COURT: Good.

11 MR. STEIN: It's a response the request for bids.

12 MR. STERN: There's a number of proposals --

13 THE COURT: Talk into the microphone, please.

14 MR. MAIMON: The only thing I'm unsure of is the
15 fourth request, Mr. Del Toral draft report, April 2015. The
16 interim report that he authored was June of 2015. I'll take a
17 look. I don't know if that's right, but we'll see if we can
18 agree.

19 MR. STEIN: Yeah.

20 MR. MAIMON: Is it possible for us to get an
21 electronic copy of the question?

22 THE COURT: Sure. We'll get it to you.

23 MR. MAIMON: Thank you.

24 THE COURT: We're going to ultimately docket these --
25 we'll docket the verdict form, and we'll have a separate entry

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1 for each of the jury questions. Oh, we're docketing the jury
2 notes each day. I do believe the job of the case manager is
3 harder than anything we do. There are just so many rules.

4 So do you think you know what all the exhibits are?

5 MR. MAIMON: I think -- I think we do. We're just
6 trying to pull them, Your Honor.

7 THE COURT: Oh, I see.

8 MR. TER MOLEN: Your Honor, I just -- I think that
9 there are some -- just to review a couple if that's okay.

10 THE COURT: Stein, will you hand Kent the letter?
11 Thank you.

12 MR. TER MOLEN: My recollection is there were several
13 different draft reports that may have been admitted into
14 evidence. We didn't look to collect all of those. That
15 shouldn't be an issue. The weekly reports, I believe what
16 that means --

17 THE COURT: Can you move the microphone closer?

18 MR. TER MOLEN: Certainly. The weekly reports, Your
19 Honor, I believe what that refers to are his what I would call
20 time sheets.

21 THE COURT: Exactly. I'm pretty sure that's what
22 that is.

23 MR. TER MOLEN: Okay. Then we can work through what
24 the right Del Toral report is. The VNA proposal, I can think
25 of at least two, Your Honor. One would be the --

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1 MR. MAIMON: Us, also.

2 MR. TER MOLEN: Pardon?

3 MR. MAIMON: We agree.

4 MR. TER MOLEN: So just to specify what those are.

5 Then we've got the response to the RFP that would have been in
6 early 2015. And then we have the follow-up proposal to the
7 city in March.

8 MR. MAIMON: End of March.

9 MR. TER MOLEN: Right. Exactly. Of 2015.

10 THE COURT: Okay. Let's do both.

11 MR. TER MOLEN: Okay. That's fine.

12 THE COURT: So is there any disagreement on what the
13 proper exhibits are in response --

14 MR. MAIMON: I think we're going to have to just get
15 them all together and then go through them and see.

16 THE COURT: Okay. Okay. Well, we'll just wait for
17 that process.

18 And, Mr. Erickson, we just got started, because this
19 was related to VNA's documents.

20 MR. ERICKSON: We understand, Your Honor.

21 THE COURT: Okay. There was also a mention when I
22 first took 15 minutes after the email, which was that DOJ
23 wants the clip reports for Del Toral and Crooks. And it
24 sounded like counsel here had no problem with that.

25 They had reached out to Jeseca for a transcript of

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1 their testimony as edited. But she doesn't take down videos
2 that have their own transcript. So that's why I posed the
3 question here.

4 MR. ERICKSON: The request was from whom?

5 THE COURT: DOJ lawyers. You know, we've got --

6 MR. ERICKSON: Civil attorneys in this case.

7 THE COURT: Michael Williams and Eric Rey, those
8 folks.

9 MR. ERICKSON: Okay.

10 THE COURT: It came from their paralegal-type
11 situation.

12 MR. ERICKSON: We don't have any objection to that.

13 THE COURT: Okay. Good.

14 MR. KENT: And, Your Honor, did the April 2015
15 Del Toral report, was that sufficiently identified?

16 THE COURT: That's what we're working on.

17 MR. KENT: That's what I was wondering.

18 THE COURT: We'll just go off the record while we try
19 to work this out and go on the record if there's a problem.

20 (Off The Record)

21 THE COURT: When Bill is going to docket the jury
22 notes, we'll redact the name of the foreperson so there will
23 be a sealed entry that has the name and an unsealed entry that
24 does not have the jury foreperson's name.

25 Is there anything else on the first note that any of

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1 you think needs to be sealed for any reason?

2 MR. STEIN: No, Your Honor.

3 MR. STERN: No.

4 MR. KENT: No, Your Honor.

5 THE COURT: All right.

6 (Pause In Proceedings)

7 MR. MAIMON: So the jury Question number 2, the first
8 item asked for is VNA draft report. And the following
9 exhibits in evidence would be responsive to that.

10 Exhibit 213, 243, 247, 479, and then 3893-97 through 3893-100.

11 THE COURT: Okay.

12 MR. MAIMON: The second item asked for is the final
13 report. And we have Exhibits 46 and 480, which are
14 responsive.

15 THE COURT: Okay.

16 MR. KENT: Moshe, are these plaintiffs or VNA?

17 MR. MAIMON: Plaintiff. All plaintiffs so far. The
18 third item are Depin Chen's weekly reports. And we have the
19 following Exhibits 38, 39, 45. And then 3893-049 through
20 -057.

21 The final item is the VNA proposal. And we have
22 Exhibits 33, 229, 1555, and VNA Exhibit 1680.

23 THE COURT: Okay.

24 MR. MAIMON: That's what we have so far.

25 THE COURT: And I'll bring those back and let them

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1 know that we have more coming.

2 MR. STERN: We have one right here, as well.

3 THE COURT: Oh, okay.

4 MR. STERN: It's the Del Toral Exhibit 1843. Sorry.
5 VNA Exhibit 1843, which is responsive to the Del Toral draft
6 report, which the jury has said dated April 2015, but it's
7 actually June 2015.

8 THE COURT: Okay. And then we have --

9 MR. STERN: There's an exhibit --

10 MR. MAIMON: The email.

11 THE COURT: The email still outstanding. Okay.

12 (Pause In Proceedings)

13 THE COURT: Please be seated.

14 The jurors are happy to see that. And they'll be
15 getting their lunch shortly. But they're still working.

16 MR. STERN: So I have the exhibit without the --
17 okay. All right. That's fine.

18 THE COURT: You have the last exhibit?

19 MR. STERN: I think VNA's getting the actual one.
20 I'm just going to let it --

21 THE COURT: Okay. You're going to let it go.

22 MR. STERN: Too many cooks.

23 MR. TER MOLEN: Thanks for looking, though.
24 Appreciate it.

25 (Pause In Proceedings)

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1 THE COURT: Do you want to put anything on the record
2 about that exhibit? The Del Toral, Cook email.

3 MR. MAIMON: So Your Honor, one more draft report
4 we're sending in is Plaintiffs' Exhibit 1612. And the Cook,
5 Del Toral email is VNA exhibit 1790.

6 THE COURT: Okay. So we will bring that to the jury.

7 And then in light -- I think our jury's working
8 pretty hard it looks like through exhibits and issues. So I
9 think it's worth staying within about 10 minutes of the
10 courthouse so that we can just keep going and get the answers
11 to them.

12 Be sure to take care of yourselves, eat, or take a
13 walk or do whatever. But maybe stay in a close perimeter.
14 Like not quite the curtilage of the courthouse but close to
15 it. Thank you.

16 (Brief Recess)

17 (Proceedings Concluded)

18 - - -

19

20 CERTIFICATE OF OFFICIAL COURT REPORTER

21 I, Jeseca C. Eddington, Federal Official Court
22 Reporter, do hereby certify the foregoing 40 pages are a true
23 and correct transcript of the above entitled proceedings.

24 /s/ JESECA C. EDDINGTON
25 Jeseca C. Eddington, RDR, RMR, CRR, FCRR

07/25/2022
Date